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Supreme Court, U.S.
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NO.

In The

Supreme Court of the United States

October Term, 1997

Immanuel Grinn,

Petitioner,

vs.

Village of North Palm Beach, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Immanuel Grinn, *pro se*
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40 pp

QUESTIONS PRESENTED

May a court adopt recommendations from a magistrate judge to dismiss a *pro se* U.S.C. 42 § 1983 Complaint for failure to state a claim upon which relief can be granted if the magistrate conducted no hearings [28 U.S.C. § 636(b)(1)], gave no opportunity to present evidence or bring forward witnesses and thus denied plaintiff fundamental due process?

May a court then dismiss with prejudice, without plaintiff "given at least one chance to amend" [*Bank v. Pitt*, 928 F.2d 1108, 1111 (11th Cir. 1991)] that *pro se* Complaint -- against a municipality and its policymaking officers in their official and independent capacities -- predicated on a deprivation under color of state law of a fundamental, substantive Constitutional right: to petition the government for redress of a grievance of public concern?

Is a § 1983 or § 1985(3) Complaint against a municipality and/or its officers subject to a "heightened pleading" standard [*Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, et al.*, 507 U.S. 163, 164 (1993)]?

Subsidiary questions are unconstitutionality of laws facially and/or as applied, standards of "official" and "personal" immunity, standards of conspiracy, and right to jury trial.

LIST OF PARTIES TO THE PROCEEDING

In addition to THE VILLAGE OF NORTH PALM BEACH; named in the caption:
LAWRENCE B. KELLEY, individually, personally, and/or in his official capacity as Member of Village Council;
VIRGINIUS A. MARKS, individually, personally, and/or in his official capacity as Member of Village Council;
CHARLES R. O'MEILIA, individually, personally, and/or in his official capacity as Member of Village Council;
SAMUEL T. VALENTE, individually, personally, and/or in his official capacity as Member of Village Council;
GAIL H. VASTOLA, individually, personally, and/or in her official capacity as Member of Village Council;
GEORGE W. BALDWIN, individually, personally, and/or in his official capacity as Village Attorney;
DENNIS W. KELLY, individually, personally, and/or in his official capacity as Village Manager;
KATHLEEN F. KELLY, individually, personally, and/or in her official capacity as Village Clerk.

Because of changes on the Village Council, the individuals named below should be substituted in title in their official capacities only. Above named individuals are retained as defendants in their individual and personal capacities.

Substitute EDWARD M. EISSEY for LAWRENCE B. KELLEY
Substitute DAVID B. NORRIS for VIRGINIUS A. MARKS
Substitute JOSEPH A. TRINGALI for SAMUEL T. VALENTE

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APPENDIX..... See separate booklet

I, Petitioner, Immanuel Grinn, respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

28 U.S.C. § 2403(b) may apply. The initial document filed in the Supreme Court has been served on the Attorney General of Florida.

OPINIONS BELOW

The opinion of the United State Court of Appeals for the Eleventh Circuit (Court of Appeals) [App.(A)], Case No. 97-5044, decided January 29, 1998, is not published. The opinion of United States District Court, Southern District of Florida, Northern Division (West Palm Beach) (District Court) in Immanuel Grinn v. Village of North Palm Beach, *et al.*, Case No. 97-9122-CIV-RYSKAMP, decided May 6, 1997 [App.(C)] adopting the Magistrate Judge's Report and Recommendation (Magistrate Report) is not published. The Magistrate Report filed April 23, 1997 is not published [App.(D)].

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on January 29, 1998. The Court of Appeals Denied a timely petition for rehearing on April 15, 1998 [App.(B)].

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS INVOLVED

United States Constitution Article VI, Clause 2	App.(E-1)
United States Constitution First Amendment	App.(E-1)
United States Constitution Fourth Amendment	App.(E-1)
United States Constitution Fifth Amendment	App.(E-1)
United States Constitution Seventh Amendment	App.(E-2)
United States Constitution Fourteenth Amendment	App.(E-2)

28 U.S.C.A. § 636(b)(1)	App.(F-1)
28 U.S.C.A. § 1331	App.(F-2)
28 U.S.C.A. § 1343	App.(F-2)
42 U.S.C.A. § 1983	App.(F-3)
42 U.S.C.A. § 1985(3)	App.(F-3)
42 U.S.C.A. § 1988	App.(F-4)

Fed.R.Civ.P. 8(f) "All pleadings shall be so construed as to do substantial justice."
Fed.R.Civ.P. 9(b) "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred in general."

Fed.R.Civ.P. 12(b)(6)	App.(G-1)
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Florida State Statute § 847.013(4)	App.(H-5)
Florida State Statute § 847.09	App.(H-6)

North Palm Beach Code, Charter Article III, §10	App.(I-1)

STATEMENT OF THE CASE

The Constitution of the United States constructs, under the rule of law, the proper interrelationship between the individual and government. Certain human rights are declared inviolate. In a Complaint [App.(J)], I alleged that municipal government officers individually and in conspiracy under color of state law maliciously deprived me (generally) of those clearly established rights,

privileges, and immunities, and (specifically) of the First Amendment right to peacefully petition the government for redress of a grievance. Despite precedent of accepting an initial submission of a petition for referendum with less than required number of signatures for ballot access, the designated municipal officer refused to accept it. The municipality maliciously instituted a criminal complaint against me for violating a State Statute which criminalizes signing one's own name more than once to a petition. Ultimately the criminal charges were dismissed with prejudice and I filed a civil Complaint.

The Magistrate Judge granted immunity to the municipal officers and recommended [App.(D)] that the District Court dismiss my *pro se* Complaint (absent affidavits, absent discovery, absent depositions, absent a trial, absent a hearing, absent a notice of opportunity to amend; thus denying due process) -- for failure to state a claim upon which relief can be granted. The District Court Judge adopted [App.(C)] the Magistrate Judge's recommendation four days after I filed my Objections and dismissed with prejudice the Complaint. The Court of Appeals ratified the District Court's judgment [(App.(A) and App.(B)].

Throughout this Petition, where braces {} appear, they are indices of my intrusions in cited quotations. Where bold type appears, **my** emphasis is to be inferred.

UNITED STATES CONSTITUTION

The United States Constitution First Amendment states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The United States Constitution Fourteenth Amendment states in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States ...." The United States Constitution Article VI, Clause 2 states in part: "This Constitution and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land...."

A First Amendment right may be reasonably regulated by government circumspectly and carefully. Once those reasonable regulations are in place, they should be scrupulously observed by the government, ambiguities being resolved in the people's favor.

PROCEEDINGS IN COURTS BELOW

On February 27, 1997 I filed my Complaint [App.(J)], demanding a jury trial with the District Court. Jurisdiction was pursuant to 28 U.S.C.§§1331 and 1343 [App.(F)] arising under First, Fourth, Fifth and Fourteenth Amendments [App.(E)]. I stated a claim through 42 U.S.C. §§1983, 1985(3), 1988 [App.(F)]. It was docketed as No.97-8122-CIV-RYSKAMP. It included four exhibits [App.(I), App.(R), the Criminal Court's Order of Dismissal, and 14 pages of official documents in support of my contention that it was not the intent of the legislature when it enacted State Statute 104.185 to have it apply to municipalities].

In the Complaint I specifically alleged: (1) ¶¶7 through 14, that the individual defendants were policymakers acting under color of law; (2) ¶¶16 through 19, 21, 33, 37, 38, 39, 60, 61, 65 through 70, 74, 75 that in their actions, singly and/or in conspiracy, in retaliation for my exercise of Constitutional rights: (a) they denied me my right to petition; (b) they filed criminal charges against me with no probable cause; (c) they interfered in the the trial (where ultimately charges were dismissed with prejudice); and (d) that those actions were illustrative of a decade long pattern; (3) ¶¶25, 27, 29, 30, 31, the facts of events that transpired on August 16, 1997; (4) ¶¶23,28,51,53 that refusing my petition for redress of grievance was contrary to precedent and language of the Charter; thus unconstitutionally applied to me. I included a copy of the Charter as an exhibit and excerpted pertinent portions in ¶¶50 and 52; (5) ¶32 I sent notice to Council and included a copy as an exhibit; and (6) ¶¶41 through 46, that

State Statute §104.185 was unconstitutional on its face and as applied.

On March 3, 1997 Judge Kenneth L. Ryskamp issued an Order referring the Case (Pre-Trial) to Magistrate Judge Ann E. Vitunac. On March 12, 1997 I submitted a Motion to liberally construe my pleadings because I was a *pro se* plaintiff [App.(T)]. The Motion was granted by the magistrate on March 20, 1997.

On March 20, 1997, I submitted four Memoranda of Law, Points and Authorities in support of my Count I Motion for declaratory and injunctive relief on State Statute §104.185:

(A) "Right to Petition is Part and Parcel of the First Amendment" and (B) "Pre-eminence of the First Amendment" with one exhibit;

(C) "Compelling State Interest" and "Least Restrictive Means";

(D) "Overbreadth" in that §104.185 applied to any and all petitions; and

(E) "Vagueness" with two exhibits including assertion that the word "petition" was not defined.

On March 31, 1997, the Defendants filed a Motion to dismiss the case. On April 8, 1997, I filed a Response with exhibits attached [App.(M), (N), (O). and (P)] to deny the Defendants' Motion to dismiss. I attached two Memoranda of Law, Points, and Authorities:

(F) "Legislative Intent and Statutory Construction" of §104.185 and

(G) Inapplicability of §104.185 [App.(H)] to me referencing Article VIII, §2(b) [App.(H)] of the Florida Constitution, enabling language of State Statute §166.021 and its "Expressly" language with examples of State Statutes §§316.002, 316.007, 847.013(4) and 847.09 [App.(H)]; and the Municipal Petition Process with detail of Charter Article III §10 [App.(I)] and addressing events leading up to and including August 16, 1995.

On April 11, 1997, the Defense moved to strike the four Memoranda I submitted March 20, 1997. I responded on April 21, 1997.

On April 11, 1997, the Florida Attorney General filed a Motion to dismiss with prejudice Counts I and II of the

Complaint. On April 16, 1997, I filed Motions to (a) quash and deny the April 11, 1997 Attorney General Motion and (b) to bifurcate Count I from Counts II, III, IV, with non-jury trial for Count I. On April 18, 1997, **I filed a motion for hearing** and declaratory judgment on Count I.

The Magistrate Report was issued On April 23, 1997 [App.(D)] in which she acknowledged that I "had responded in substance" in my April 8, 1997 Response [which included as exhibits documents now submitted in App.(M), (N), (O) and (P)]. The Magistrate (1) did not agree that §104.185 was vague, overbroad, or violated " First Amendment rights ... by criminalizing ... a First Amendment peaceful activity' "; (2) stated that I did not "provide the Court with any examples of this alleged 'past practice' {referred to in DE 1 at ¶53} of accepting signature sheets containing multiple signatures from the same individual." (3) found that it was not "unconstitutional to apply the Charter's provision requiring a minimum number or valid signatures against" me on the initial submission; (4) did not believe that I met the burden of having to "present non-conclusory allegations which set forth specific evidence" to deprive the Defendants of immunity; (5) opined that I did not "make the requisite showing of a persistent and widespread practice that is violative of his or other's civil rights" and (6) recommended that the claim should "be dismissed for failure to state a claim upon which relief may be granted and all pending motions be denied as moot."

I refer to (2) above. First, I still insist that the referenced "past practice" was the acceptance of signature sheets with less than required signatures needed to force ballot access. Those documents were submitted with my April 8, 1997 Response. It is clear from the placement of ¶53 and ¶28 what the antecedents are. Secondly, since there was only one previous occasion for petitions to referendum before -- the petitions in 1991 -- any reference by me to precedent or past practice is, therefore, specific and clear to the **Defendants** ["and gave respondents fair notice of its basis" (*Conley v. Gibson*, 355 U.S. 41, 48 (1957)].

According to 28 U.S.C.A § 636(b)(1) [App.(F)]:
A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion {...} to dismiss for failure to state a claim upon which relief can be granted{....}
(B) a judge may also designate a magistrate **to conduct hearings,** including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A){....}

But I never had any hearings.

On May 2, 1997 I filed my Objection to the Magistrate Report. As per 28 U.S.C.A § 636(b)(1) ("The judge may also receive further evidence"), I submitted ten exhibits, [among them App.(I), (M), (N), (O), (R), (S)], seven of which duplicated earlier submittals. I wrote on page 10:

> Plaintiff would show a documented history on the part of Village legislative and executive branch in violating Plaintiff's First Amendment rights, including an attempt by the Village in 1987 to intimidate the plaintiff to stop his distribution of political handbills, the 1989 defacing of his political campaign signs and subsequent amicable settlement that the Village rewrite its code allowing political signs in private homeowners' yards, the Council passage in 1991 of a motion aimed at the Plaintiff (a Councilman at the time) not to record motions in the minutes that die for a lack of second, recent overt Council insensitivity to the plaintiff's religion, etc., etc."

On May 6, 1997, the Judge issued the Order [App.(C)] adopting the Magistrate Report, dismissing the case with prejudice, and denying all pending motions as moot.

On June 3, 1997, I filed my Notice of Appeal to the Circuit Court. On September 2, 1997, I filed my Appeal brief (No.97-5044) with the Circuit Court. My desire for **oral**

argument to "present {my} argument in a manner more in conformance with {my} lack of legal skills" was **denied** even though "{my} only experience {...} ha{d} been 'on-the-job' " {and} "{i}t seem{ed} to {me} that {I} did not clearly articulate {my} points to the Court below." I argued Count II, III, and IV as to: (1) Right to Jury Trial, (2) Municipal Liability, (3) Personal and Official Capacity, (4) Qualified Immunity, (5) Conspiracy. I argued Count I as to the unconstitutionality of State Statute 104.185: (1) Pre-eminence of the First Amendment, (2) Overbreadth, (3) Vagueness, (4) Compelling State Interest & Least Restrictive Means, (5) Prior Restraint, (6) Third Party Standing and (7) Legislative Intent. I included as Exhibits: Florida laws [App.(H)] and North Palm Beach Code, Charter Article III § 10. [App.(I)].

The Defendants filed their Brief of Appellees on September 17, 1997. I filed my Appellant Reply Brief on October 1, 1997. The Attorney General filed an Appellee Brief on October 2, 1997. I filed my Appellant Reply Brief to the Appellee Brief of the Attorney General on October 14, 1997. I filed my amended Appellate Brief on December 17, 1997. On January 29, 1998, the Circuit Court denied my Appeal [App.(A)].

On February 17, 1998 I submitted a petition for rehearing with the Circuit Court. I included 12 Exhibits including App.(I), (M), (N), (O), (P), (Q), (R), (S). On April 15, 1998, the Circuit Court denied the Petition for Rehearing [App.(B)].

HISTORY

Just Three of More Examples of Village Intrusions on my Constitutional rights

I was a candidate in the March 10, 1987 election to Council. I received a Notice of Code Violation dated March 3, 1987 indicating that the "Location of the Violation" was "Village of North Palm Beach", that the "Nature of the Violation" was "handbill distribution" and that the "Corrective Action Required" was "Stop all handbill activity immediately". The handbills were supportive of my candidacy for Council in the upcoming election. The Director of Public Services, responsible for code enforcement

was Charles R. O'Meilia.

On March 9, 1989, I notified the Village of my intention to put up political signs on private property in support of my candidacy in the upcoming March 14, 1989 election [App.(K)]. In a letter dated the following day, Mr. O'Meilia responded [App.(L)]. On March 11 and March 12, 1989 (Saturday and Sunday), employees of the Village affixed pink notices on the sign faces, obscuring the message, but making it evident that the Village was noting a code violation. The pink notices were the first and only time such a device was ever used. Saturday and Sunday are not normal working days for the Public Services Department. Coincident with the pink notices on the sign faces, "Notice of Code Violation" were sent to Village residents who had my political signs in their yards. The notice stated that the "Nature of the Violation" was "Off Premise Sign/Section 6-119(b)(9)" and that "Corrective Action Required" was "Remove sign ...within ten (10) days ...." The signs were put up on March 9, 1989, the election was March 14, 1989. Obviously, the signs would have been down within the ten days without the code violation notices. Results of the two person candidacy election: Virginius A. Marks -- 1044, Grinn -- 928.

A law suit was instigated by me against the Village and Mr. O'Meilia in District Court (CaseNo:89-8182-CIV-ROETTGER) which ultimate resolution on July 1, 1989 was a settlement. The Village agreed to "amend its current Village ordinance relative to the posting of signs and shall adopt a new ordinance ..." which would allow "[n]ot more than three temporary political signs, each said sign not exceeding five (5) square feet in background area ..."

On February 27, 1996, I went to a Council meeting to state my dismay that after two incidents a month apart of anti-Jewish and Anti-African-American literature being distributed within the Village limits, and after the Village Manager and Village Public Safety Director alerted the Council in writing, Council had not publicly condemned the incidents. I told the Council that I had always been clear that I was of the Jewish faith, and that I was deeply offended when at a previous Council meeting,

Councilwoman Vastola had stated that I did not believe in God. Ms. Vastola responded, "The reason I said that is when we have Invocation, I never see you stand. If you don't stand for Invocation, I don't care who or what your faith is. To me that is an insult to God." I then explained to her that in my faith unless there are ten co-religionists present, one does not pray in public. Her response was: "I could care less what your faith is. I truly don't care what your faith is. I truly don't. I don't, I don't care."

Precedent in filing petitions to referendum

In 1991, the Council passed a few ordinances which would allow the development of certain areas within the Village. I felt that the projects were not in conformance with the Comprehensive Plan or the Planned Unit Development ordinances. I went to Village Clerk Kathleen Kelly to find out detailed specifics as to what form the petition for referendum on the ordinances would have to be presented, to put the question to the ballot. The Village Clerk refused to elaborate except to say that the requirements were in the Charter [App.(I)].

To find out what was necessary, I signed my own name to a signature form which was described as a "Petition for Referendum on Ordinance 31-91 [App.(M)] (first submitted to the District Court on April 8, 1997 in reply to Defendant's Motion to Dismiss).

On October 4, 1991, The Village Clerk accepted the petition with only one signature. She sent a memorandum [App.(O)] (first submitted to the District Court on April 8, 1997 in reply to Defendant's motion to Dismiss) to Village Attorney George Baldwin, in which communication appears:

> Attached is copy of petition that has been resubmitted today by Councilman Grinn. According to our Charter, I must certify insufficiency within five days after it is filed, or state insufficiencies that may apply.

On October 8, the Village Attorney replied by facsimile [App.(P)] (first submitted to the District Court on April 8, 1997 in

reply to Defendant's motion to Dismiss) in which he states:

> One of the questions you asked me to address is to whether or not you are required to complete a Certificate as to its sufficiency within five (5) days from the date the Petition was filed or by October 9, 1991. {...} The subject Petition **with one signature** could be only one of many {...}. It is my opinion that the Charter **requires** the Village Clerk to complete a Certificate as to Sufficiency upon completion of the filing for Referendum Petitions and not on a piecemeal basis.
>
> Therefore, it would be my opinion that the Village Clerk would only **complete a Certificate as to Sufficiency (or insufficiency) upon expiration of the thirty (30) day period** called for in Article III, Section 10 (c) (4) {....}
>
> If {...} the Petition has been circulated and completed as **filed** with you on October 4, 1991 **{with only one signature}**, then I find that the {[Petition]} is legally insufficient under the Charter of the Village of North Palm Beach as follows:
>
> 1. The number of signatures is not equal in number to at least 15% of the total number of qualified voters registered to vote at the last Regular Village Election. {...}

On October 30, 1991 Village Clerk Kathleen Kelly sent a Certificate of Insufficiency to petition # 29-91 by registered mail to each member of the Petitioners' Committee. The petition was certified insufficient for lack of valid signatures. "1,240.65" signatures were needed, but despite the fact that the County Supervisor of Elections, out of 1429 signatures, certified that 1256 were valid, the Clerk, Kathleen K. Kelly, was disqualifying an additional 48 signatures because although the signature sheets actually had more (51) signatures, the affidavits attached stated there were 48. There was no mention in that letter of the right to amend. The Petitioners' Committee filed a timely Notice of Intention to Amend, collected additional signatures, and the Clerk issued a Certificate Of Sufficiency on Nov. 12, 1991.

"Adult Entertainment"

Back on September 6, 1991, Village Manager Dennis Kelly sent a three page memorandum to Village Attorney George Baldwin. On the second page the following is stated:

> However, one of the problems encountered in our discussions among staff in the exercise of that authority, is the equal protection clause of the Constitution. If the Council revokes the occupational license to Patty's Place, to what extent is the Council compelled to revoke the occupational license of the various video stores that also have a similar back room for the sale of pornographic material? Can we in fact shut one business down without shutting the others down? Or, can we shut all the businesses down that trade in this particular merchandise? To the best of our knowledge and belief, there is one video store on Northlake Boulevard which has a back room.

Northlake Boulevard is the main East-West thoroughfare in the five square mile Village. On August 4, 1994, the Village received the first application for a Village Occupational License from an entity which ultimately established itself on Northlake Boulevard as "Adult Video Warehouse." A second Application was made on September 22, 1994. The Occupational License was granted. In response to citizen outrage, the Village officials responded that they had no alternative -- due to First Amendment protections governing issues of free expression.

On June 8, 1995, the Village hired non-lawyer Mr. La Rue's consultant firm to draft an Adult Entertainment Ordinance. In my "The North Palm Beach REALITY," seventh issue, I allude to Mr. La Rue as the Village Manager's "friend," and the "copycat" ordinance he will draft. The one-year 21 issues REALITY [e.g., tenth issue, (App.[Q])] was highly critical of the Village government. On July 17, 1995, "copycat" Ordinance # 22-95 was enacted to establish an Adult Entertainment District on Northlake Blvd. A referendum on the ordinance would effectively establish a definable community standard of obscenity. Four consecutive related but distinct events ensued.

THE FOUR EVENTS
FIRST

On the morning of August 16, 1995, there was an infraction by the Village of the First Amendment right of petition. I complied with all the regulations of the Village Charter ordinance [App.(I)]. It is the Village that failed to comply with the procedures the Village instituted to regulate a First Amendment right. What transpired is reflected in my August 24, 1995 letter (GL) [App.(R)] to the Village Clerk, copied to Council, D. Kelly, and G. Baldwin (first submitted as an exhibit with my Complaint filed February 27, 1997) and the Clerk's notarized August 21, 1995 Witness Statement (WS) [App.(S)] (first submitted as an exhibit with my May 2, 1997 Response to the Magistrate Report).

On August 16, 1995, some time between 9:45 a.m. and 10:30 a.m., I entered the Village Clerk's Office with signed signature sheets for filing as a petition for referendum of Ordinance # 22-95. Village Clerk Kathleen Kelly refused to accept the signature sheets ["I therefore did not accept these papers" (WS)], basing her decision on the fact that there clearly were not enough signatures to fulfill the element necessary to have the mandatory referral of the ordinance to the electorate. There ensued a heated discussion between Ms. Kelly and me as to the interpretation of the Charter, as far as the provision for the "second bite at the apple" which allows for an application for amendment by notice for intention to amend. I asked her to confirm her decision and reason supporting her decision in writing. She refused. I quote from (WS):

> **It was apparent to me** that Mr. Grinn knew that he had only collected 400+ signatures, but wanted to submit it anyway and have me continue the process and ultimately declare the petition "insufficient", thereby giving him the right to "amend" and gain 10 to 17 days additional days in which to get the required number.
> However, as I interpret the Charter of the Village, the initial filing of a petition is predicated on 15% of the voters of the Village having signed it, and filling it in proper form, the key words being "proper form". I showed

Mr. Grinn the rules in the Charter. He argued that I should accept the document and declare it "insufficient". My interpretation of the procedure is that "sufficiency" or "insufficiency" is declared based on verification of valid signatures, the key word being "valid".

I excerpt the pertinent portions of the Charter [App.(I)], my emphasis in bold type and/or bold and underlined.

(c)(1) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of voters of the village equal in number to at least fifteen (15%) of the total number of qualified voters registered to vote at the last regular village election.

(c)(2) ***Form and content.*** All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filings. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

{...}

(d)(1) *Certificate of clerk; amendment.* Within twenty (20) days after the initiative petition is filed and five (5) days for a referendum petition; the village clerk or other official designated by the council **shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail**. Grounds for insufficiency are only those specified in subsection (c). **A petition certified insufficient for lack of the required number of valid signatures may be amended once** if the petitioners' committee files a notice of intention to amend it {....}

(d)(2) *Council review.* **If a petition has been certified insufficient** and the petitioners' committee does

not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, **file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition**.

Parts of Charter Article III, Section 10(d)(1) and 10(d)(2) were excerpted in the original Complaint ¶¶ 50, 52.

In the first paragraph (WS) the Village Clerk states, "Mr. Grinn is experienced in the petition process, having successfully led a petition drive to Referendum in 1992 {*sic*}." The experience I gained was from the 1991 petition drive described above, wherein (a) the Village Clerk accepted a petition for referendum with only one signature [App.(M)] and (b) the correspondence [App.(O),(P)] between the Village Clerk and the Village Attorney (the very same individuals holding those posts in 1991 and 1995). Under color of law the Village violated the 14th Amendment command "No State shall ... deny to any person ... the equal protection of the laws." The same Village official accepted a one signature petition for referendum on 4 October 1991, but refused to accept a petition for referendum with over 500 signatures on 16 August 1995.

I submitted a petition. By Charter Art.III,§10(c)(1) *supra*, it was not a **mandatory** referendum petition. It did not have enough signatories. But ... the Charter gives the petitioners' committee thirty days for an **initial** submission. If there is an insufficiency in the number of valid signatures submitted, the mathematics indicate an additional two week "gain" period to canvass for supplementary signatures. If thirty days equate to 1300 signatures, 2 weeks equate to 650 signatures. The Charter, therefore, contemplates a not insignificant amount of signatures to be lacking in the **initial** submission.

The " 'proper form' " the Village Clerk refers to in her Witness Statement as a reason not to accept the submitted signature sheets

is defined in Charter Article III, Section 10(c)(2) quoted above. The signature sheets submitted met all those requirements.

There is nothing in the regulatory language of the Charter that permits the Village to refuse for filing petitions based on a lack of valid signatures. In fact the language plainly allows for amendment **after** receipt of a certificate of insufficiency by extension of time period to amass the necessary amount of signatures if an initial attempt lacks requisite signatures. The requirement for a minimum certain amount of valid signatures is to mandate ballot access. The Charter makes clear that submitting less for filing and consequent certificate of insufficiency is also acceptable for two reasons: (1) to amend to seek additional signatures and/or (2) to submit the petition to Council as a precatory petition which would at least force the Council to discuss the petition at a public meeting (where citizens have the right of input). When, in the morning, the Village Clerk refused to accept and file the signature sheets, she deprived me (as a member of the petitioners' committee and a signatory of a signature sheet) and the class of over 500 other signatories of a supplicatory petition for redress, provided for in Charter Article III, Section 10(d)(2).

Manifestly, it is not **filing** that is being regulated by the Charter 15% requirement, but rather **mandatory ballot access**. Elementary, fundamental logic argues that petitions be (minimally) accepted by the government for consonance within the meaning of the First Amendment. By not accepting the petition, the Village Clerk, also, exercised unconstitutional prior restraint.

The Village Clerk did not accept a petition which conformed to the letter and spirit of the Village Charter regulations of petition to redress a grievance. She knew immediately my intent when she stated that "you cannot buy the ten days" (GL). The Village Clerk is a person acting under color of state law. She is the policymaking administrative official designated by the council and named by her title in the Charter as the official administering the petition-to-referendum process. She knew or should have known that she was acting in an unconstitutional way because of the language of the Charter itself and the correspondence she herself engaged in with the Village Attorney in October 1991. She acted with "evil eye and unequal hand" [*Yick Wo v. Hopkins*, 118

U.S. 356, 373-374 (1885)].

SECOND

I had assured many Village residents that I knew the rules and regulations governing the petition process to refer an ordinance to the vote of the electors. I bruited about that if the initial submission was insufficient, a certificate of insufficiency would be issued and an additional number of days would be afforded to gather additional signatures. I had, after all, gone through the petition experience in 1991.

As I stated in (GL), the Village Clerk "stated that the extension of time to collect more signatures could be granted only if at least a total of 1300 signatures were submitted, but that subsequent to that submittal less than 1300 would be determined to be valid signatures."

On the same day, after an interim visit, some time between 4:50 p.m. and 4:55 p.m., I returned. I Quote from GL:

> I submitted signature forms with a total number of signatures in excess of 1300. Once again you refused to accept the signature forms as petitions, this time on the grounds that many of the signatures (approximately 800) were all of one Immanuel Grinn. You telephoned the Village Attorney in my presence and it seemed he supported your position. Your refusal was witnessed by Ms. Teal. Another person present was Ms. Lucia Traugott. You denied my request to write me the reason(s) you refused to accept the signature forms as petitions. You wanted me to take back the signature forms. I refused since the signature forms were a matter of public record. I left the Clerk's office with you standing, holding the signature forms in your hands.

(WS) essentially tracks my letter with additions. "Since this document did not constitute a proper petition, I did not " 'take' " his document, she "was not accepting his papers". Then, "... State Statute expressly forbids a person to sign a petition more than once ..." and "I also asked him if he was aware that knowingly signing a petition was against the law. He said 'show me". I did not

show him the statute at this time."

Again the Village Clerk refused to accept the petition. Again the Village Clerk demonstrated prior restraint on a First Amendment right. This time with the "show" of support of the Village Attorney. There were no fictitious names. There were no forgeries. There was no fraud. There was no intent to deceive. All statements on all the documents were accurate (The documents exactly replicate the language of the 1991 petition [App.(M) (N)] with the exception of the substitution of dates and of 22-95 wherever 31-91 appear). The deadline for initial submission was 5:00 p.m. The Clerk did not accept the petition by 5:00 p.m. I left the signature sheets after 5:00 p.m. in the hands of the Village Clerk, no proximate threat to anybody or anything, after 5:00 p.m.

THIRD

The Village's non-acceptance of the signature sheets on the morning of August 16, 1995 was the unconstitutional stimulus which provoked the response of multiple "Immanuel Grinn" signatures. **The signature sheets were not filed, were not declared "insufficient". Since the signature sheets were not accepted for filing by deadline, the petition was not a mandatory petition for ballot access.**

According to her (WS), the Village Clerk then, in her office, related the transpired events to Village Manager Kelly and Councilman Valente. She called the Village Attorney. Then she went home and called the other four council people, successfully reaching two of them and presumably informing the other two in the following day(s). On August 21, 1995, "Mr. O'Meilia came into the office after lunch to get" certified copies of four signatures sheets and accompanying affidavits.

Mr. O'Meilia then went to the North Palm Beach Public Safety Department (in the same building as the Village Clerk's office) with the certified documents and made a complaint that I violated State Statute 104.185 [App.(H)] (first submitted as an exhibit with my Complaint filed February 27, 1997). This complaint named the Village as the "victim."

Here a logical dilemma evidences. Elsewhere (in my April 8, 1997 reply to Defendants' Motion to Dismiss, page 7, ¶21) I refer

to "The irony: on the one hand the Village refused to accept the signature sheets as a petition; on the other hand the Village used those very same signature sheets as a petition to claim victim status on charges initiated by Defendants against Plaintiff." With those "unclean hands" [*Olmstead v. United States*, 277 U.S. 438, 483-484 (1928), Brandeis, J., dissenting] the Village instituted a criminal action against me. This was done maliciously and without probable cause.

FOURTH

On or about September 19, 1995 I received a Summons to appear on case No. 9501968MM A08 to answer an information charging me with criminal violation of of the laws of the State of Florida. I pled not guilty.

Individual policymakers intervened in the criminal case in an effort to prevent the charge from being withdrawn while it was pending before Judge Cory Ciklin in the Circuit Court of the Fifteenth Judicial District in Palm Beach County, Florida.

On June 6, 1996 in reply to Judge Ciklin's inquiry as to what was holding up the settlement of the case, Assistant State Attorney Timothy Beckwith replied:

> The State at least has to have input from other sources, primarily individuals who this affected and I think that's where we {encounter} resistance to some sort of a .. be it community service for *nol pros* or something along those lines.

After further prodding by Judge Ciklin, the Assistant State Attorney said, "The State ran that proposal by individuals who are affected by this and they were reluctant to accept a *nol pros*...."

On June 13, 1996, Judge Ciklin addressed me:

> All I can offer you for you, Mr. Grinn, is: you plead "no contest" and I do "withhold adjudication," court costs 105 bucks, end it today. I mean, that's all I can do in a case like this. But, again, you know I'm very sensitive to the fact when I hear a quote unquote victim, you know, I'm inclined not to do that because there may be something more than meets the eye here as we talked about last time. If it's political, if it's of a political nature, if it has to do

> with someone, perhaps the Village alleges is a gadfly (and I say that respectfully), you know, maybe that's what's going on here.

On July 1, 1996, Mr. Beckwith told Judge Ciklin, "Well, Your Honor, the only thing: I do think if I enter into this, that I should let people know about what I'm going to do and let them, if they want to address the Court, they can do it." After a small diversion Judge Ciklin turned to Mr. Beckwith: "Okay. Do you need to call somebody? I mean would you feel better doing that? By calling somebody now and talking to them about this?" Mr. Beckwith answered, "Well, I do think I should let the Village know what ..." Miffed, I interjected, "Let them know afterward. Let them know afterward." Mr. Beckwith did not agree. Judge Ciklin then told him to make a call to his superior and "we do the plea now." Mr. Beckwith's response:

> I mean, ultimately it is my decision, but at the same time, I would like to talk to him. I would like to put it in writing, I would like to put the Village on notice what I'm going to do and I'm not going to be deterred from whatever decision I make, because I've had their input and I've told Mr. Grinn their input is done.

An hour and a half later, Mr. Beckwith had not returned, Judge Ciklin made an order approving my Subpoena Duces Tecum for scores of documents from the Village.

On August 30, 1996, without admitting any guilt and there being no **intimation** of guilt as to the charge alleged, I entered a plea of no contest. On October 22, 1996, my motion to dismiss was granted and the complaint was dismissed with prejudice.

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEAL HAS SANCTIONED SUCH DEPARTURES FROM ITS OWN PREVIOUS DECISION AND 28 U.S.C. § 636(b)(1) BY THE DISTRICT COURT IN DISMISSING A *PRO SE* § 1983 COMPLAINT, AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION.

> Where it appears a more carefully drafted complaint might state a claim upon which relief can be granted, we have held that a district court should give a plaintiff an opportunity to amend his complaint instead of dismissing it. {...} This is still true where the plaintiff does not seek leave until after the district renders final judgment{...}, and even where the plaintiff never seeks leave to amend in district court, but instead appeals the district court's dismissal {...} (complaint dismissed with prejudice and plaintiff appealed; court of appeals stated that "if the complaint does not adequately apprise the defendant of the nature of the plaintiff's claim, the court should allow the plaintiff to amend the pleadings to more plainly delineate the cause of action rather than dismiss the complaint.").
>
> **If our precedent leaves any doubt regarding the rule to be applied in this circuit, we now dispel that doubt by restating the rule. Where a more carefully drafted complaint might state a claim. a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice.**[6]
>
> [6] We note that the rule that a plaintiff be given at least one chance to amend his complaint before the district court dismisses it with prejudice is consistent with the Federal Rules' fundamental goal that disputes be resolved on the merits, rather than on the pleadings. Under the Federal Rules, "the purpose of pleading is to facilitate a proper decision on the merits." *Conley*, 55 U.S. at 48, 78 S.Ct. at 103. Dismissing an action without granting even one chance to amend is contrary to this goal.
>
> *Bank v. Pitt*, 928 F.2d 1108, 1111 (11th Cir. 1991).

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS HAS DECIDED THE DISMISSAL OF A *PRO SE* § 1983 COMPLAINT OF VIOLATION OF A FIRST AMENDMENT RIGHT IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THE UNITED STATES SUPREME COURT.

> Following the simple guide of rule 8(f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. *Conley v. Gibson*, 355 U.S. 41, 48 (1957).

> What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations. *Neitze v. Williams*, 490 U.S. 319, 327 (1989).

> Petitioner's complaint {...} was not prepared by counsel. It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standard than formal pleadings drafted by lawyers...." *Haines v Kerner*, 404 US 519, 520, 30 L Ed 2d 652, 92 S Ct 594 (1972), {...} And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. *Hughes v. Rowe*, 449 U.S. 5, 10 (1980).

See Estelle v. Gamble, 429 U.S. 97, 106 (1976); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Cruz v. Beto*, 405 US 319, 322 (1972) *Jenkins v. McKeithen*, 395 U.S. 411, 421-422 (1969); *Conley v Gibson*, 355 U.S. 41, 45-46 (1957).

> "[A] complaint should not be dismissed unless 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' *McLain v. Real Estate Board of New Orleans, Inc.*, 444 US 232, 246, 62 L Ed 2d 441, 100 S Ct 502 (1980) (quoting *Conley v Gibson*, 355 US 41, 45-46, 2 L Ed 2d 80, 78 S CT 99 (1957))." *Hartford Fire Insurance Co. v. California*, 509 U.S. 764, 811 (1993).

See Haines v. Kerner, 404 U.S. 520-521 (1972).

> We review here a decision granting a motion to dismiss, and therefore must accept as true all the factual allegations in the complaint.{...} We think that it is impossible to square the "heightened pleading standard" {...} with the liberal system of "notice pleading" set up by the Federal Rules {... which} do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, et al.*, 507 U.S. 163, 164 (1993).

See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

> When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. **The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is remote and very unlikely, but that is not the test**. *Scheuer v Rhodes*, 416 U.S. 232, 236 (1974).

> The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

> The solitary individual who suffers a deprivation of his constitutional rights is no less deserving of redress than one who suffers together with others. *Steffel v. Thompson*, 415 U.S. 452, 474 (1974).

> *Monell v. New York City Dept. of Social Services*, 436 US 658, 700-701, 56 L Ed 2d 611, 98 S Ct 2018 (1978), as support for its conclusion that municipalities are "persons"

> under § 1983, reasoned that "there can be no doubt that § 1 of the Civil Rights Act [of 1871] was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Maine v. Thiboutout*, 448 US 1, 4-5 (1980).
>
> Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. *Bell v. Hood*, 327 U.S. 678, 684 (1946).

To **state a claim for relief I must allege** a constitutional infraction done under color of law. In my Complaint, I have so specifically alleged and submitted substantiating documentation. **To recover I must prove.** To prove, I deserve a trial.

> To state a claim under § 1983, a plaintiff must **allege** the violation of a right secured by the Constitution and laws of the United States, and must show that the **alleged** deprivation was committed by a person acting under color of state law. *Parratt v Taylor*, 451 US 527, 535, 68 L Ed 2d 420, 101 S Ct 1908 (1981) (overruled in part on other grounds, *Daniels v Williams*, 474 US 327, 330-331, 88 L Ed 2d 662, 106 S Ct 662 (1986); *Flagg Bros. Inc. v Brooks*, 436 US 149, 155, 56 L Ed 185, 98 S Ct 1729 (1978). *West v Atkins*, 487 U.S. 42, 48 (1988).

See Albright v. Oliver, 510 U.S. 266, 271 (1994); *Paul v. Davis*, 424 U.S. 693, 700 (1976).

> By the plain terms of § 1983, two -- and only two -- **allegations** are required in order to state a cause of action under that statute. First, the plaintiff must **allege** that some person has deprived him of a federal right. Second, he

> must **allege** that the person who has deprived him of that right acted under color of state or territorial law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).
>
> We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the **allegation** of their respective complaints, they were entitled to have them judicially resolved. *Scheuer v. Rhodes*, 416 U.S. 232, 250 (1974).

See Monroe v. Pape, 365 U.S. 167, 171 (1961).

> The plaintiff must **prove** that (1) a person (2) acting under color of state law (3) subjected the plaintiff or caused the plaintiff to be subjected (4) to the deprivation of a right secured by the Constitution or laws of the United States. *Oklahoma City v. Tuttle*, 471 U.S. 808, 829 (1985), Brennan, J. concurring.

See Parratt v. Taylor, 451 U.S. 527, 535, (1981) overruled on other grounds, *Daniel v. Williams*, 474 U.S. 327; *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150 (1970).

> As our decision in *Canton* makes clear, "deliberate indifference" is a stringent standard of fault, requiring **proof** that a municipal actor disregarded a known or obvious consequence of his action. *Bryan County Commissioners v. Brown*, 520 U.S. --,--, 137 L.Ed.2d 626, 643 (1997).
>
> This right {to jury trial} was designed "to guard against a spirit of oppression and tyranny on the part of the rulers," and "was from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties." {2 J. Story, Commentaries on the Constitution of the United States} 540-541 {(4th ed 1873)}. *United States v. Gaudin*, 515 U.S. ---, 115 S.Ct. 2310, 132 L.Ed.2d 444, 450 (1995).

> Whatever doubt may have existed should now be dispelled. The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

The Florida Constitution Article VIII, §2(b) and enabling legislation [App.(H)] make clear that the Florida is a "Home Rule State" where the State delegated all government power to municipalities except those **expressly** prohibited or preempted. Thus, the Council members, Village Manager, Village Clerk and Village Attorney function under color of state law.

> {A} municipality can be liable under § 1983 only where its policies are the "moving force [behind] the constitutional violation. " {...} As Justice Brennan's opinion in *Pembaur v Cincinnati*, 475 US 469, 483-484, 89 L Ed 2d 452, 106 S Ct 1292 (1986) (plurality) put it: "[M]unicipal liability under § 1983 attaches where -- and only where -- a deliberate choice to follow a course of action is made from among various alternatives" by city policymakers. See also *Oklahoma City v Tuttle*, 471 US, at 823, 85 L Ed 2d 791, 105 S Ct 2427 (opinion of Rehnquist, J.). *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

See Bryan County Commissioners v. Brown, 520 U.S. --,--, 137 L.Ed.2d 626, 648 (1997), Souter, J. dissenting; *Pembaur v. Cincinnati*, 475 U.S. 469, 480-481 (1986); *Newport v Fact Concerts, Inc.*; 453 US 247, 250-252, (1981); *Owen v. Independence*, 445 US 622, 625-630 (1980).

> **The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. {...}**

> It is clear that under "color" of law means under "pretense" of law. {...} Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. *Screws v. United States*, 325 U.S. 91, 106, 111 (1945).

> A necessary concomitant to the determination of whether the constitutional right asserted by the plaintiff is "clearly established" at the time a defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all. *Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

See Davis v. Scherer, 468 U.S. 183, 194 (1984). *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1984); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Butz v Economou*, 438 U.S. 478, 498 (1978).

> The First Amendment guarantees "the right of the people ... to petition the Government for a redress of grievances." The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression.{...}
> {... T}he values in the right of petition as an important aspect of self-government are beyond question. {...}
> The Petition Clause {...} was inspired by the same ideals of liberty and democracy that gave us freedoms to speak, publish and assemble. {...} These First Amendment rights are inseparable. *McDonald v. Smith*, 472 U.S. 479, 482-483, 485 (1985).

> We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable. {They are cognate rights.}" *Thomas v Collins*, 323 US 516, 530

(1945). See *De Jonge v Oregon*, 299 US 353, 364, 81 L ed 278, 283, 57 S Ct 255 (1937). *United Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967).

State Statute § 104.185 [App.(H)] was applied unconstitutionally to me, violative of the Fifth and Fourteenth Amendment clauses of due process because: (1) The application of Statute 104.185 to municipal elections is contrary to Florida Constitution Article VIII, §2(b) [App.(H)] and enabling legislation of Florida Chapter 166 ("Municipal Home Rule Powers Act") State Statutes §§ 166.021 and 166.042 [App.(H)] wherein there is no **express** language in § 104.185 stating that the legislation covers municipalities; (2) does not reflect the legislative intended desired goal of regulating only State petitions submitted at General elections; and (3) even to conservatively interpret § 104.185 to be restrictive to mandatory petitions specifically for ballot access, the Village's unconstitutional action in refusing to receive the petition for filing by the deadline converted the signature sheets to a precatory petition, incapable of doing anything more than supplicating, not mandating, ballot access.

The Constitutional right of petition infringed by the Village and its officers named was clearly established at the time of their challenged conduct. They knew or should have known of that right. They knew or should have known that their conduct violated the constitutional norm. *See Ex Parte Young,* 209 U.S. 128, 159-160 (1907). Further, the officials acted with "malicious intention" to deprive me of a constitutional right or to cause me "other intentional injury." They intended the consequences of their conduct. *See Procunier v. Navarette*, 434 U.S. 555, 562, 566 (1978).

State Statute § 104.185 [App.(H)] has been amended (as presented in the Appendix), but the pertinent portion is still aptly unconstitutional so the point has not been mooted by the amendment. The statute casts an extraordinarily broad net over all petitions. By its clear language, the statute applies to any and all petitions on issues. The Courts have acknowledged the preeminence of the First Amendment. The Courts' forbearance of

"third party standing" in First Amendment expression cases manifests the principle that even a **chill** to the peaceful expression of individual rights is ultimately more dangerous to the order of a civilized democratic society than the *robust* expression of the same. *See Brockett v. Spokane Arcades, Inc.* 472 U.S. 491, 503-504 (1985); *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *De Jonge v. Oregon*, 299 U.S. 353, 364-365 (1937).

Statute §104.185 does dissuade citizens from the free exercise of the First Amendment protective right of petition for a redress of grievance because: (1) it is overbroad, (2) it is vague, (3) it is not narrowly tailored nor narrowly targeted, (4) it regulates not a compelling state interest but only a convenience oriented state interest, (5) the exaction of a criminal penalty is excessive.

> In its opinion {*United States v. Kirby*, 74 U.S. 7 Wall, 482, 486} the court says: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the Legislature intended exceptions to its language which would avoid results of this character. **The reason of the law in such cases should prevail over its letter.**" *Holy Trinity Church v. United States*, 143 U.S. 457, 461 (1892).

By construing State Statute §104.185 *in pari materia* and to include Legislative intent derived from its written history (including staff comment), it is obvious that the language of the statute was targeted (for a convenience purpose) at petitions for ballot access for **State** candidacies or issues in a **General** Election, not a municipal election Because §104.185 was divorced from what became §99.097, without qualifying language it became overbroad and was unconstitutionally applied to me.

> In its effort to be all-inclusive, however, the provision raises serious problems of vagueness, particularly treacherous where, as here, the violation of its terms

> carries criminal penalties and fear of incurring these sanctions may deter those who seek to exercise protected First Amendment rights. *Buckley v. Valeo*, 424 U.S. 1, 76-77 (1976).

See Houston v. Hill, 482 U.S. 451, 459 (1987); *Smith v. Goguen*, 415 U.S. 566, 574-576 (1974); *Smith v. California*, 361 U.S. 147, 150-151 (1960); *Morissette v. U.S.*, 342 U.S. 246, 262-263 (1952); *Screws v. United States*, 325 U.S. 91, 101 (1945).

CONCLUSION

The First Amendment protects not only the substantive right to peacefully petition the government, but also protects those who exercise that privilege, as well as the other privileges, from government retaliation in response to the exercise of those rights. The intrusion by a municipality by its officers against peaceful political protest deserves juridical censure.

Since institution of the Complaint, I have not had a hearing. I have not seen a magistrate. I have not seen a judge. I have not seen the inside of a courtroom. I have not been granted the opportunity to submit loads of evidence to a judge or jury.

I have met the threshold requirement to gain access to trial. To prove, I must go to trial. I have not been before a jury. I have not been granted that Seventh Amendment right, Fed.R.Civ.P. 38(a).

Wherefore, I respectfully request that my petition for writ of certiorari be granted.

Respectfully submitted

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